

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**IN RE: GENENTECH HERCEPTIN)
(TRASTUZUMAB) MARKETING)
AND SALES PRACTICES LITIGATION)** **MDL DOCKET NO. 16-MD-2700**

**ONCOLOGY-HEMATOLOGY)
ASSOCIATES OF CENTRAL ILLINOIS,)
P.C., an Illinois corporation,)
Plaintiff,)
vs.) **Case No. 17-cv-394-TCK-JFJ**
GENENTECH, INC., a Delaware corporation,)
Defendant.)**

OPINION AND ORDER

Before the Court is the Motion to Reconsider the Dismissal of Case No. 4:17-CV-394 filed by Plaintiff Oncology-Hematology Associates of Central Illinois, P.C. (“OHACI”). Doc. 393. Defendant Genentech, Inc. (“Genentech”) opposes the motion. Doc. 405.

OHACI filed suit against Genentech on June 14, 2017 in the U.S. District Court for the Central District of Illinois (Peoria). The case was docketed as Case No. 17-cv-1279. Genentech was served shortly after the filing.

On July 6, 2017, a Conditional Transfer Order was entered, resulting in the transfer of the case to this Court, to be included with a number of other cases as part of this Multidistrict Litigation case against Genentech. OHACI’s case was docketed by this Court as Case No. 4:17-cv-394 (the “OHACI Case”).

At the time the OHACI Case has added to the MDL Case, Genentech had already filed its Amended Motion for Summary Judgment Based on Federal Preemption. Doc Nos. 200, 201. Because OHACI's case had yet not been conditionally transferred at the time the Amended Motion for Summary Judgment was filed, the motion was not directed at OHACI's complaint. *Id.*

On July 24, 2017, this Court entered an order in the MDL Case staying Defendant's obligation to respond to the Complaint recently filed by OHACI and any subsequent complaints pending a ruling on Genentech, Inc.'s Amended Motion for Summary Judgment, and stating, "If the case proceeds past Phase I, the Court will lift the stay at that time." *Id.*, Doc. 235. Thus, although OHACI actively participated with other plaintiffs in opposing Genentech's summary judgment motion, Genentech never filed an answer to OHACI's Complaint, nor did it file any dispositive motion with respect to the Complaint.

On March 20, 2019, the Court entered its Opinion and Order in the MDL case granting Genentech's Motion for Summary Judgment. *Id.*, Doc. 389. The same date, pursuant to the granting of the summary judgment motion in the MDL case, the Court terminated all of the individual cases against Genentech, including the OHACI Case. 17-CV-394.

The Court concurs with OHACI that since Genentech's Motion for Summary Judgment did not name OHACI, its case was improperly dismissed. However, the Court's decision has precedential effect, as will the appellate court's decision on the other plaintiffs' appeal of the decision.

Accordingly, the Court hereby grants OHACI's Motion to Reconsider dismissal of its claims and Case No. 17-CV-394, which was previously closed, is hereby reopened and remanded to the U.S. District Court for the Central District of Illinois (Peoria).

ENTERED this 29th day of October, 2019.



TERENCE C. KERN
United States District Judge